

Decision 06-09-034 September 21, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

J. Raymond Greene,

Complainant,

vs.

SBC California and SBC Advanced Solutions,  
Inc.,

Defendants.

(ECP)

Case 06-03-016

(Filed March 15, 2006)

J. Raymond Greene, for himself, complainant.

Sherry Winbush, for SBC California (dba AT&T California), and

Anita Connor, for SBC Advanced Solutions, Inc. (dba AT&T  
Advanced Solutions, defendants.

**OPINION GRANTING RELIEF, IN PART**

Complainant alleges various instances of inappropriate behavior, poor service, and other tortious action by AT&T California (AT&T) and AT&T Advanced Solutions, Inc. (ASI), an internet service provider (ISP). Complainant alleges that he experiences intermittent static and other interference on his telephone lines, and that AT&T refuses to investigate or resolve these service issues. Additionally, complainant alleges that he has had several billing and disconnection problems with AT&T. Complainant further alleges that AT&T has engaged in various conspiratorial actions designed to retaliate against him including, among other things, intentionally withholding invoices to make him appear delinquent on his account, disconnecting service without notice, failing to

port his telephone numbers to other carriers and subjecting his account to Rule 11 status (relating to discontinuance of service). Complainant further claims that AT&T personnel have treated complainant in an unprofessional and discourteous manner and have thereby violated various laws, including the Americans with Disability Act (ADA).

Complainant requests a refund of all payments to AT&T for 7½ years plus \$5,000 damages. AT&T and ASI deny the allegations and move to dismiss. However, on July 14, 2006, AT&T offered to refund \$2,500 (three years of charges permitted by the statute of limitations), and ASI offered to return \$649 (all charges it has received from complainant). Complainant refused, asking for additional damages based on his allegations of harassment and violation of the ADA.

Defendants move to dismiss on various grounds:

- ISP service is a non-regulated, interstate, long distance telephone service and as such is not offered pursuant to state tariff or subject to the jurisdiction of the Commission;
- Complainant's allegations do not aver facts sufficient to state a cause of action under California Public Utilities Code Section 1702 and Rule 9 of the Commission's Rules of Practice and Procedure;
- To the extent that the complaint seeks damages or remedies beyond the jurisdiction of the Commission, such requests for damages and/or remedies must be dismissed; and
- The complaint is barred by the applicable statute of limitations.

We will dismiss the nonjurisdictional causes of action. The "Commission has uniformly held that it has no jurisdiction to award damages as opposed to

reparations.” (PT&T Co., 72 CPUC 505, 509 (1971) (citing *Jones v. PT&T Co.*, 61 CPUC 674 (1963) for proposition that there is no Commission cause of action for alleged willful interruption of service.) “Reparatory relief is limited to a refund or adjustment on part or all of the utility charge for a service or group of related services. Consequential damages on the other hand is an amount of money sufficient to compensate an injured party for all the injury proximately caused by a tortious act, or to replace the value of performance of a breached obligation.” Complainant’s remedy for any alleged intentional damage is with the courts, not the Commission. (*Jones v. PT&T Co.*, *supra*. See also, *Mastrantuono v. PG&E*, D.90369, 1 CPUC 2d 587.)

Complainant’s causes of action, other than for poor service, are sound in tort. Based on those allegations, it is apparent that complainant seeks damages, not reparations. We have no jurisdiction to award damages. The allegations in the complaint seeking damages will be dismissed. However, defendants have offered to refund to complainant all the money to which complainant might be entitled, consistent with the applicable statute of limitations. As we cannot award more in reparations than the amount offered by defendants, we will award those amounts.

## **O R D E R**

**IT IS ORDERED** that:

1. AT&T California shall pay complainant \$2,500 as reparation.
2. AT&T Advanced Solutions shall pay complainant \$649 as reparation.
3. All relief not granted in Ordering Paragraphs 1 and 2 is denied.

4. Case 06-03-016 is closed.

This order is effective today.

Dated September 21, 2006, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners